

**MASSOOD & BRONSNICK, LLC**

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Attorneys for: Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

MONTVALE SURGICAL CENTER, LLC  
A/S/O various "PATIENTS",

Plaintiffs(s),

v.

CONNECTICUT GENERAL LIFE  
INSURANCE COMPANY D/B/A CIGNA,  
CIGNA HEALTHCARE OF NEW  
JERSEY, INC.; ABC CORP. (1-10) (Said  
names being fictitious and unknown  
entities),

Defendant(s),

CIVIL ACTION NO.: 2:12-cv-05257-SRC-CLW

**CIVIL ACTION**

**NOTICE OF MOTION PURSUANT TO  
FEDERAL RULE OF CIVIL PROCEDURE  
37 SEEKING THAT MATTERS BE TAKEN  
AS TRUE AND FOR SANCTIONS, AND  
FOR OTHER RELIEF**

**TO:** E. Evans Wohlforth, Jr.  
GIBBONS P.C.  
One Gateway Center  
Newark, New Jersey 07102-5310  
(973) 596-4879

*Attorneys for Defendant, Connecticut  
General Life Insurance Company*

**PLEASE TAKE NOTICE THAT** Plaintiff, Montvale Surgical Center, LLC a/s/o various Patients (“Montvale”) through its attorneys, Andrew R. Bronsnick, Esq., Massood & Bronsnick, LLC and Anthony K. Modafferi III, Esq., The Agresta Firm, P.C., will move before the Honorable Cathy L. Waldor, USMJ, at a time and place that is to be determined, for an Order

(1) Directing that the following designated facts be taken as true:

- A. None of the Plans at issue in this action exclude coverage for single – room, unlicensed surgical facilities;
  - B. Plaintiff’s Single-room, unlicensed surgical facility is covered under the plans.
- (2) Prohibiting the Defendant from opposing Plaintiff’s allegation in Paragraph 16 of its Second Amended Complaint, filed March 22, 2013 (ECF#21) that: Defendants’ Plans with the Patients contain provisions that permit payment on behalf of these patients for outpatient facility services at the surgical facilities.
- (3) In the alternative, striking Defendant’s Answer, until such time as (i) Defendant provides responsive answers to each of Plaintiff’s Interrogatories; and further meets its burden of going forward with proof demonstrating that the language excluding coverage in the form SPDs also appears in each of the plans at issue, and, (ii) produces all documents requested in Plaintiff’s Request for Production of Documents;
- (3) Ordering that Defendant make payment of the reasonable expenses, including attorney fee’s caused by Defendant’s Failure to provide information in the Plaintiff’s interrogatories.

**Grounds For Relief.**

Plaintiff brings this motion pursuant to Rule 37(b)(2)(A)(i)(ii) &(iii) for Defendant’s failure to comply with this Court’s Order directing that Defendant respond to interrogatories addressing discrete facts concerning whether the Plans at issue exclude coverage for single – room, unlicensed surgical facilities. See this Court’s “TEXT ORDER: Plaintiff to docket supplemental interrogatories by 12/5/14. Defendant to respond by 12/31/14. Ordered by Magistrate Judge Cathy L. Waldor on 12/1/14. (tjg, ) (Entered: 12/01/2014)” (ECF#54)

Plaintiff's motion is also made pursuant to Rule 37(c)(1)(A)&(C), and Rule 37(d)(1)(A)(ii) because the Defendant failed to disclose any information in its response to Plaintiff's court ordered interrogatories; failed to identify witnesses, and failed to sign interrogatories in violation of Rule 26(g)(3).

**PLEASE TAKE FURTHER NOTICE** that in support of the within Motion, Montvale shall rely upon the Memorandum of Law and Declaration of Andrew R. Bronsnick, Esq. submitted herewith and all other pleadings and papers on file in this matter.

**PLEASE TAKE FURTHER NOTICE** that at the time and place aforesaid Montvale will respectfully request that the proposed form of Order submitted herewith be entered by the Court.

**MASSOOD & BRONSNICK, LLC**  
**Attorney for Plaintiff**

*/s/ Andrew R. Bronsnick*  
**By: \_\_\_\_\_**  
**ANDREW R. BRONSNICK**

**The Agresta Firm, P.C.,**  
**Attorneys for Plaintiff**

**By: /s/ Anthony K. Modafferi, III**  
**Anthony K. Modafferi, III, Esq.**

Dated: May 26, 2015